Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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87-1562

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

HOWARD O'KEEFE,

Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF FLOSSMOOR, ILLINOIS, and JOHN F. BARTON, Chief of Police of the Village of Flossmoor, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Is the petitioner's discharge from his employment as a police officer too severe a punishment, thereby a deprivation of his employment property right protected by the due process clause of the Fourteenth Amendment of the United States Constitution?

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HOWARD O'KEEFE,

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THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF FLOSSMOOR, ILLINOIS, and JOHN F. BARTON, Chief of Police of the Village of Flossmoor, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

OPINIONS BELOW

On August 1, 1986, the Illinois Appellate Court requested that the Honorable Warren D. Wolfson determine the appropriate sanction after the respondents refused to consider any other sanction but discharge, in order to have a final appealable order. (Order Disposing of Appeal under Supreme Court Rule 23, No. 85-3452, is reprinted herein as Appendix A).

On August 7, 1987, the Illinois Appellate Court reversed the decision of the Honorable Warren D. Wolfson wherein he entered an order for sanction of less than a discharge; namely, 30-day suspension. (Order Disposing of Appeal

under Supreme Court Rule 23, Nos. 86-3150 and 86-3390 (consolidated), is reprinted herein as Appendix B). A Petition for Rehearing was filed with the Illinois Appellate Court, which petition was denied on September 11, 1987. (Denial of the Petition for Rehearing by the Illinois Appellate Court is reprinted herein as Appendix C).

Subsequently thereafter, a Petition for Leave to Appeal was filed with the Illinois Supreme Court, which petition was denied on December 22, 1987. (Denial of the Petition for Leave to Appeal by the Illinois Supreme Court is reprinted herein as Appendix D).

JURISDICTION

1. The federal question that the petitioner could not be deprived of his property right to his employment on the basis of an arbitrary, capricious, and unreasonable termination resulting in too severe punishment, was raised in the administrative hearing before the Board of Fire and Police Commissioners of the Village of Flossmoor, Illinois, relative to the sanction of discharge; further, that very issue was raised in a complaint for administrative review filed in the Circuit Court of Cook County, Illinois, and heard by the Honorable Warren D. Wolfson; subsequently the issue of the petitioner's discharge as being arbitrary, capricious, and unreasonable was considered by the Illinois Appellate Court in two of its decisions which have been previously identified as Appendix A and Appendix B; lastly, in the petition for leave to appeal to the Supreme Court of Illinois, that issue was also raised.

2. The petition for Writ of Certiorari was filed within ninety days after the entry of the judgment by the Illinois Supreme Court on December 22, 1987.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner was charged with failure to respond promptly to a call to assist a fellow police officer on March 22, 1983.

At the hearing that was held on June 3, 1983, James Lentz, a Flossmoor police officer, testified that after receiving a call to respond to an activated burglar alarm at approximately 5:00 p.m., he contacted the petitioner.

At the hearing, Lentz further testified that approximately 15 minutes later, the petitioner radioed that he was en route but was held up in traffic.

According to Lentz's testimony, it took the petitioner about 25 minutes to arrive in response to a call approximately 2.2 miles away.

However, the petitioner testified that he had arrived at the scene approximately 10 minutes after receiving the

call to respond, and that the heavy traffic prevented him from arriving sooner.

The petitioner was found guilty of the charge for failure to respond to a call promptly.

Subsequently, there was a hearing relative to aggravation and mitigation, and during the course of that hearing, the Chief of Police of the Village of Flossmoor Police Department introduced a record of eight suspensions.

In mitigation, it was argued that the eight suspensions totalled 22 days of suspension time for minor disciplinary infractions covering a period of 13½ years.

Thereafter, the petitioner was terminated and then filed a complaint for administrative review.

On May 30, 1984, the Honorable Judge McMorrow found that the Board's findings did not constitute cause for discharge, and that the discharge was unreasonable.

The case was remanded to the Board on October 5, 1984, to reconsider a sanction of less than a discharge upon the petitioner.

After another hearing, the Board reaffirmed its discharge. Thereafter, the matter was returned to the Circuit Court for review of the sanction; and the Honorable Warren D. Wolfson reviewed the record and determined again that the decision to discharge the petitioner was arbitrary, capricious, and unreasonable, and the matter was remanded to the Board not to discharge the petitioner.

Thereupon the Board appealed the matter, which matter was determined to be not a final, appealable order, pursuant to the Appellate Court's decision of August 1, 1986, wherein the court noted in a footnote at page 3: "Here,

where the matter has been at hearing and upon review twice in the circuit court it appears that to have an appealable order a request should be made upon the circuit court to impose a sanction it believes appropriate."

Based upon the direction of the Appellate Court in its opinion of August 1, 1986, the respondents made a request for such a ruling, and the Honorable Warren D. Wolfson ruled that the discharge was arbitrary, capricious, and unreasonable, when in a transcript of proceedings on 10/31/86, at page 6, he noted:

> Let me make some comments for the record. So the record is clear, it is not my intent to substitute my judgment for that of the Board.
>
> Judge McMorrow decided and I have decided that the sanction of the Commission, sanction of discharge, was unreasonable and arbitrary.
>
> I am not simply deciding that a more lenient sanction is a matter of choice. I do not intend to usurp the powers of the Board nor compromise the Board's ability to function.
>
> The order has been entered and I found the way I found because, as has been pointed out in the briefs, officers are expected to follow the law and the administrative agencies have to follow the law, and now two courts have found that their sanction was unreasonable and arbitrary, being too harsh, and I am simply enforcing that decision in the only way open to me under the statute.

From that order, the Board appealed; and the Appellate Court reversed Judge Wolfson and sustained the discharge of the Board.

REASONS FOR GRANTING THE WRIT

THE PETITIONER'S DISCHARGE FROM HIS EMPLOYMENT AS A POLICE OFFICER IS TOO SEVERE A PUNISHMENT, THEREBY A DEPRIVATION OF HIS EMPLOYMENT PROPERTY RIGHT PROTECTED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

On August 1, 1986, the Illinois Appellate Court requested that the Honorable Warren D. Wolfson determine an appropriate sanction, since the matter had been at a hearing and upon review twice in the Circuit Court, with the consequence that the Appellate Court observed that, in order to have a final appealable order, the Circuit Court would have to determine the appropriate sanction.

In effect, in this instance, the Circuit Court, the petitioner, and the respondents considered the Appellate Court's request of August 1, 1986, a directive to the Circuit Court of Cook County, Illinois, to impose a penalty, as reflected by the respondents raising the issue of whether the Circuit Court had the authority to impose a sanction, which issue the Appellate Court, on page 7 of its decision of August 7, 1987, evaded by stating that it did not have to consider that issue, since it decided that the discharge was not arbitrary, capricious, and unreasonable.

However, in conjunction with the interpretation of the August 1, 1986, Appellate Court decision requesting an imposition of a punishment that the Circuit Court believed was appropriate, the petitioner, herein, cites *Thomas v. The Police Board*, 90 Ill. App. 3d 1101 (1980), at 1105, wherein it is noted that the Circuit Court may reverse or remand in whole or in part any finding of the Board

of Fire and Police Commissioners with reference to the power granted under Sec. 12(1)(F) of the Administrative Review Act (Ill. Rev. Stat. 1979, Chap. 110, Par. 275).

As a result, the Honorable Warren D. Wolfson observed in the transcript of proceedings of October 31, 1986, at page 2, that the Board could have been subjected to a petition to show cause why the Board should not have been held in contempt for not obeying the first order relating to Judge McMorrow.

For purposes of emphasis, Judge Warren D. Wolfson, on 10/31/86, at page 6, stated:

> Let me make some comments for the record. So the record is clear, it is not my intent to substitute my judgment for that of the Board.
>
> Judge McMorrow decided and I have decided that the sanction of the Commission, sanction of discharge, was unreasonable and arbitrary.
>
> I am not simply deciding that a more lenient sanction is a matter of choice. I do not intend to usurp the powers of the Board nor compromise the Board's ability to function.
>
> The order has been entered and I found the way I found because, as has been pointed out in the briefs, officers are expected to follow the law and the administrative agencies have to follow the law, and now two courts have found that their sanction was unreasonable and arbitrary, being too harsh, and I am simply enforcing that decision in the only way open to me under the statute.

Based upon Judge Warren D. Wolfson's remarks, the intent was not to substitute his judgment for that of the Board of Fire and Police Commissioners, but he and Judge McMorrow found the sanction of the Board unreasonable and arbitrary, with the result that he was not "simply

deciding a more lenient sanction as a matter of choice" but that the imposition of his sanction was based upon the unreasonable and arbitrary considerations without usurping the powers of the Board nor compromising with the Board's ability to function; as the Circuit Court noted, if police officers are expected to follow the law, administrative agencies must also follow the law; therefore, obedience to a Circuit Court order is not a usurpation of a power.

There is no question that the Honorable Judge McMorrow and Judge Wolfson had considered the eight suspensions upon which the Appellate Court, in this instance, in its opinion of August 7, 1987, relied with reference to matters of aggravation in supporting a discharge relative to the incident for which the petitioner had been found guilty; in fact, Judge McMorrow, in the transcript of proceedings on August 23, 1985, at pages 63-65, considered the petitioner's prior disciplinary action and determined that it would not justify a discharge, which observation was noted by Judge Wolfson in the transcript of proceedings of 10/31/86, pages 1 through 8.

In fact, Officer O'Keefe's prior suspensions all had been for relatively minor offenses and never exceeded five days.

Prior to the incident in this case, he had not received a five-day suspension for over three years. At the same time, as Judge McMorrow noted, Officer O'Keefe had received several commendations. Taken as a whole, this record did not justify an officer's termination for a single incident of arriving several minutes late in response to a radio call, pursuant to the observations of Judge McMorrow and Judge Wolfson, who certainly analyzed the eight suspensions, which totalled approximately 22 days over a period of 13½ years.

To support Honorable Warren D. Wolfson's analysis, the petitioner cites *Massingale v. Police Board*, 140 Ill. App. 3d 378 (1986), wherein specifically at page 382, the Appellate Court notes that although Massingale, a Chicago police officer, was found guilty for being intoxicated while driving an automobile, and that such a finding of fact was not against the manifest weight of the evidence, and that further the finding of dismissal was not unreasonable or arbitrary, nevertheless the court felt that the punishment was too severe, with the consequence that it reversed the Circuit Court in that respect.

Although Massingale was off-duty at the time, in support of its position, the *Massingale* Appellate Court cited *Kirsch v. Rochford*, 55 Ill. App. 3d 1042, 371 N.E.2d 899 (1977), which involved a Chicago police officer who was intoxicated while on duty, who had created a disturbance at the O'Hare Airport and had failed to take an alcoholic test, resulting in a reversal of a discharge on the legal theory that the punishment was too severe.

There is no distinction between off-duty and on-duty discipline for alleged misconduct as supported by *Davenport v. Board of Fire and Police Commissioners*, 2 Ill. App. 3d 864 (1972), at 870.

The harshness of the punishment, in this instance, deprives the petitioner of his employment property right in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

Consequently, the "too severe" standard should be applied in this particular matter, since the Honorable Warren D. Wolfson did note in his observations, as found on page 5 of this petition, that he felt the sanction of discharge was "too harsh".

CONCLUSION

For reasons enumerated herein, the writ should be granted.

Respectfully submitted,

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APPENDIX A

No. 85-3452
Opinion of the Appellate Court of Illinois
First District, August 1, 1986

HOWARD J. O'KEEFE,

Plaintiff-Appellee, and Cross-Appellee,

vs.

THE BOARD OF FIRE and POLICE COMMISSIONERS of the VILLAGE OF FLOSSMOOR, and JOHN F. BARTON, Chief of Police of the Village of Flossmoor, Illinois,

Defendants-Appellants, and Cross-Appellants.

Appeal from the Circuit Court of Cook County.
Honorable Warren D. Wolfson, Judge Presiding.

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23

Following an administrative hearing, the Board of Fire and Police Commissioners of the Village of Flossmoor found plaintiff, Howard O'Keefe, guilty of violating four rules and regulations of the Flossmoor Police Department and ordered him to be discharged from the department. Upon administrative review, the circuit court of Cook County confirmed the Board's findings but determined that the sanction of discharge was unreasonable. The court remanded the cause to the Board to reconsider the appro-

priate penalty. On remand, following another evidentiary hearing, the Board reaffirmed its original findings and order discharging plaintiff. Upon administrative review, the court again confirmed the Board's findings but also determined that the sanction of discharge was arbitrary, capricious and unreasonable. The court remanded the cause for imposition of a sanction other than discharge. The Board has appealed, contending that there was cause for discharge. Plaintiff has cross-appealed, contending that the Board's findings were against the manifest weight of the evidence. For the reasons hereinafter stated, we dismiss both appeals.

A final decision, order or judgment of the circuit court, entered in an action to review a decision of an administrative agency, is reviewable by appeal as in other civil cases. (Ill. Rev. Stat. 1985, ch. 110, par. 3-112.) An order remanding the case to the agency to impose a sanction other than discharge is not final and appealable because it does not terminate the litigation between the parties on the merits. (*Mitrenga v. Martin* (1982), 110 Ill. App. 3d 1006, 1007, 443 N.E.2d 268. See also *Department of Transportation v. Grawe* (1983), 113 Ill. App. 3d 336, 341, 447 N.E.2d 467, and the cases cited therein.) Were we to affirm the trial court's order that the Board formulate a sanction less than discharge, the Board would need to rule again on the appropriate sanction. Subsequently, either plaintiff or the Board would have the option of appealing to the circuit court once more. (*Mitrenga v. Martin* (1982), 110 Ill. App. 3d 1006, 1007, 443 N.E.2d 268. See also *Department of Mental Health and Developmental Disabilities v. Civil Service Commission* (1981), 85 Ill. 2d 547, 426 N.E.2d 885.) Where, as here, the circuit court has the power to remand an agency decision for further hearings or proceedings (Ill. Rev. Stat. 1985, ch. 110, par. 3-111(a)(6)), juris-

diction must necessarily remain with the circuit court until after disposition of these matters before jurisdiction may be conferred upon this court. (*Mitrenga v. Martin* (1982), 110 Ill.App.3d 1006, 1008, 443 N.E.2d 168. See also *Wilkey v. Illinois Racing Board* (1983), 96 Ill.2d 245, 248-50, 449 N.E.2d 843.)[1] Accordingly, we dismiss both appeals.

APPEALS DISMISSED.

SULLIVAN, P.J., LORENZ and PINCHAM, JJ., concur.

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[1] Here, where the matter has been at hearing and upon review twice in the circuit court it appears that to have an appealable order a request should be made upon the circuit court to impose a sanction it believes appropriate.

APPENDIX B

Nos. 86-3150 and 86-3390 (Consolidated)
Opinion of the Appellate Court of Illinois
First District, August 7, 1987

HOWARD O'KEEFE,

Plaintiff-Appellee and Cross-Appellant,

vs.

THE BOARD OF FIRE and POLICE COMMISSIONERS OF THE VILLAGE OF FLOSSMOOR, ILLINOIS, and JOHN F. BARTON, Chief of Flossmoor Police,

Defendants-Appellants and Cross-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable Warren D. Wolfson, Judge Presiding.

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23

The plaintiff, Howard O'Keefe, and the defendants, the Board of Fire and Police Commissioners of the Village of Flossmoor, Illinois, and John F. Barton, the Chief of Police of the Village of Flossmoor, all appeal from an order of the trial court affirming the defendants' findings that the plaintiff, a former Flossmoor police officer, violated the rules and regulations of the Flossmoor Police Department, but reversing the defendants' decision to discharge the plaintiff and, instead, ordering that a 30-day suspension be imposed. The plaintiff argues that the Board's

finding that he violated department rules and regulations was against the manifest weight of the evidence, and that its action in discharging him was arbitrary, capricious, and unreasonable. The defendants argue that there was sufficient evidence to support the Board's findings and its decision to discharge the plaintiff, and that the circuit court lacked the authority to impose sanctions upon the plaintiff.

This matter arose in 1983 when the defendants initiated disciplinary proceedings against the plaintiff, a 12-year veteran of the Flossmoor Police Department, charging that on March 22, 1983, he failed to respond to a call to assist a fellow officer. A hearing was held on June 3, 1983, at which James Lentz, a Flossmoor police officer, testified that after receiving a call to respond to an activated burglar alarm at approximately 5 p.m., the plaintiff informed him that he was taking a short break. Lentz further testified that 15 minutes later, the plaintiff radioed that he was en route but held up in traffic. According to Lentz' testimony, it took the plaintiff about 25 minutes to arrive in response to the call even though he was only 2.2 miles away. However, the plaintiff testified that he arrived at the scene approximately 10 minutes after receiving the call to respond. The plaintiff was found guilty of the charge against him and a hearing in aggravation and mitigation was held to determine the sanction to be imposed. During this hearing Barton testified that over the course of the plaintiff's employment with the Flossmoor Police Department he had received eight suspensions for disciplinary reasons. On June 6, 1983, the Board issued a written statement of its findings and decision. The Board determined that the plaintiff was guilty of failing to assist another officer in connection with the March 22 incident, conduct unbecoming an officer, neglect of duty,

and unsatisfactory performance. In addition, the Board found that the plaintiff possessed a written record of repeated infractions of rules and regulations and, therefore, the Board ordered that the plaintiff be discharged.

Following the Board's decision, the plaintiff filed a complaint for administrative review. A hearing on the complaint was held on May 21, 1984, and on May 30, 1984, the circuit court found that the Board's findings were not against the manifest weight of the evidence and that these findings should stand. However, the court also found that the Board's findings did not constitute cause for discharge and that the discharge was unreasonable and should be reconsidered.

The case was remanded to the Board, and on October 5, 1984, it met to reconsider the sanction imposed upon the plaintiff. At this hearing, testimony was given by James Byrnes, Raymond Tuftedal, and John Barton, the plaintiff's superior officers. The officers claimed that throughout the course of the plaintiff's employment, his performance was consistently below that of the majority of the officers in the department. In addition, Byrnes testified that according to a statistical analysis of the plaintiff's performance, the plaintiff ranked 10-to-15 percent below his fellow officers and beginning in 1980 and continuing throughout 1981 and 1982 the plaintiff failed to meet department standards. Byrnes further testified that from the time the department began evaluating performance in 1977 until his discharge in 1983 the plaintiff ranked tenth out of the 10 officers on the force. When asked to produce the written evaluation forms of the plaintiff's performance during the period in question, Byrnes and Tuftedal were able to find only three, two from 1977 and one from 1981. All three forms showed that the plaintiff's performance was average to above average during the periods

being evaluated. In addition, the 1981 form showed that the plaintiff ranked fourth out of the six officers being evaluated.

On November 2, 1984, the Board issued a statement in which it reaffirmed its finding that the plaintiff violated department rules and regulations and its decision to discharge the plaintiff. The plaintiff filed a motion to reverse the Board's decision on November 29, 1984, and a hearing on his motion was held on October 23, 1985. Following the hearing, the court again concluded that there was sufficient evidence to support the Board's finding of guilty but that the Board's decision to discharge the plaintiff was unreasonable and arbitrary and not supported by the record. The case was again remanded to the Board with the instruction that some sanction short of discharge be imposed.

Following the circuit court's ruling, the plaintiff and the defendants filed appeals. In the appeals, the defendants argued that the Board's decision was reasonable, while the plaintiff argued that the decision was against the manifest weight of the evidence. In an unpublished order this court concluded that the trial court's order remanding the case to the Board was not final and appealable. Therefore, the appeals were dismissed with the suggestion that a request be made upon the circuit court to impose a sanction it believed appropriate.

The defendants filed a motion pursuant to this suggestion and on November 5, 1986, the trial court entered an order suspending the plaintiff for 30 days without pay and ordering that the plaintiff be reinstated. This appeal followed.

The first issue on appeal is whether the Board properly found that the plaintiff was guilty of violating depart-

ment rules and regulations. Under the administrative review provisions of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, pars. 3-101 *et seq.*) the findings of an administrative agency may be overturned by a reviewing court only if the findings are contrary to the manifest weight of the evidence. (*Walsh v. Board of Fire and Police Commissioners* (1983), 96 Ill. 2d 101, 449 N.E.2d 115; *Sutton v. Civil Service Commission* (1982), 91 Ill. 2d 404, 438 N.E.2d 147; *Basketfield v. Police Board* (1974), 56 Ill. 2d 351, 307 N.E.2d 371.) Here, the circuit court concluded that the Board's determination that the plaintiff was guilty of the charge against him was not against the manifest weight of the evidence. We agree with this conclusion. The record shows that officer Lentz testified that the plaintiff took about 25 minutes to respond to a call for assistance, while the plaintiff testified that he responded in 10 minutes. Where there is conflicting evidence or testimony it is within the province of the agency conducting the hearing to resolve the conflicts and determine the credibility of the witnesses (*Batley v. Kendall County Sheriff's Department Merit Commission* (1981), 99 Ill. App. 3d 622, 425 N.E.2d 1201; *Hruby v. Board of Fire and Police Commissioners* (1974), 22 Ill. App. 3d 445, 318 N.E.2d 132; *Schnulle v. Board of Fire and Police Commissioners* (1974), 16 Ill. App. 3d 812, 306 N.E.2d 906), and the reviewing court should not substitute its judgment for that of the agency. Accordingly, the findings of the Board and the ruling of the circuit court on the question of the plaintiff's improper conduct must be affirmed.

The next issue is whether the Board's findings of fact provided a sufficient basis for its conclusion that cause for discharge existed. (*Walsh v. Board of Fire and Police Commissioners.*) Cause for discharge had been defined as some substantial shortcoming which renders the employee's

continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his no longer occupying the place. An administrative agency's finding of cause for discharge should not be overturned unless it is arbitrary and unreasonable, or unrelated to the requirements of the service. *Walsh v. Board of Fire and Police Commissioners.*

In the present case, the Board found that plaintiff's conduct on March 22, 1983, violated four department rules and regulations concerning assistance to other officers, conduct unbecoming an officer, neglect of duty, and unsatisfactory performance. The Board concluded that these violations, taken together with the plaintiff's history of eight past violations and suspensions, including three for neglect of duty and one for conduct unbecoming an officer, constituted cause for discharge.

The plaintiff contends that neither his single act of responding late to a call nor his past work record were sufficient cause for his discharge. The plaintiff argues that while, in some cases, a single incident can constitute cause for discharge, such cases involve conduct by an officer that can be characterized as illegal or more reprehensible than that with which he was charged. This argument is without merit. Even if we agree with the plaintiff's contention that, taken alone, the events of March 22 do not justify discharge, the incident, when viewed in light of the plaintiff's past record constituted sufficient cause, as defined by the supreme court. *Walsh v. Board of Fire and Police Commissioners.*

The plaintiff also argues that because he was never previously charged with poor performance and because the testimony of his superior officers concerning his perform-

ance was unsubstantiated and contradicted by the written evaluation forms, his discharge could not be justified on the basis of his past work record. We do not agree. First, as we stated previously, the credibility of witnesses and the weight to be given conflicting evidence is determined by the agency conducting the hearing. (*Batley v. Kendall County Sheriff's Department Merit Commission*; *Hruby v. Board of Fire and Police Commissioners*; *Schnulle v. Board of Fire and Police Commissioners.*) In addition, while the plaintiff correctly argues that he was never charged with being a poor performer, the record shows that in the course of his 12 years with the department, the plaintiff was suspended eight times. Two of these suspensions occurred in the year prior to his discharge. Thus, the Board could properly determine that continuance of the plaintiff's employment would be detrimental to the discipline and efficiency of the Flossmoor Police Department.

We conclude that in light of the plaintiff's conduct on March 22, 1983, and his past work performance, the Board was justified in finding that cause for discharge existed. Because of that resolution of matter, we need not consider defendants' contention regarding the circuit court's authority to enter the 30-day sanction.

Therefore, the order of the circuit court imposing a 30-day suspension is reversed and the order of the Board discharging the plaintiff is affirmed.

LORENZ, PINCHAM, JJ. and SULLIVAN, P.J.

APPENDIX C

Nos. 86-3150 and 86-3390 (Consolidated)
Order of the Appellate Court of Illinois
Denying Rehearing, September 11, 1987

HOWARD O'KEEFE,

Plaintiff-Appellee and Cross-Appellant,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF FLOSSMOOR, ILLINOIS, and JOHN F. BARTON, Chief of Police of the Village of Flossmoor, Illinois,

Defendants-Appellants and Cross-Appellees.

ORDER

Plaintiff-Appellee, Cross-Appellant's petition for rehearing is denied.

/s/ JOHN J. SULLIVAN
Presiding Justice JOHN J. SULLIVAN

/s/ FRANCIS S. LORENZ
Justice FRANCIS S. LORENZ

/s/ JAMES C. MURRAY
Justice JAMES C. MURRAY

APPENDIX D

No. 66009
Order of the Supreme Court of Illinois
Denying Leave to Appeal, December 22, 1987

(Letterhead Of)

ILLINOIS SUPREME COURT
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December 22, 1987

Mr. Stanley H. Jakala
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No. 66009 — Howard O'Keefe, petitioner, v. The Board of Fire and Police Commissioners of the Village of Flossmoor, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on January 13, 1988.